IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8353 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAPILABEN ARJUNSINH FATESINH RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

#. Heard Ms.D.R.Kacchawah, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 29-3-1999 passed by

respondent No.1 - The Commissioner of Police, Baroda against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that 6 criminal cases punishable under Prohibition Act were registered against the petitioner at Makerpura police stations in between 25th October, 1997 to 3rd March, 1999. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. That 5 cases out of 6 cases registered aginst the detenu are pending for trial in the court, while last case registered vide C.R. No : 63 of 1999 is pending for investigation. That over and above, 3 witnesses on assurance of their anonymity have given statement dated 18-3-99, 22-3-99 and 22-3-99 respectively regarding the bootlegging activities of the petitioner. That on the basis of aforesaid material, the respondent No.1 as the detaining authority has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing her prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted on behalf of the petitioner at bar that in all 6 cases were registered against the petitioner and the petitioner has been released on bail. However, while passing the impugned order, the detaining authority has failed to consider the less drastic remedy like cancellation of bail as available under Section 437(5) of the CrPC and the said fact discloses non application of mind on the part of the detaining authority and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal

No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On scrutiny of papers, it appears that in the grounds of detention, the detaining authority has observed that the detenu has been released on bail and thereafter, has continued the anti social activities. That procedure to claim cancellation of bail being time consuming, it could not prevent the petitioner from continuing the anti social activities and as such, the detention order is necessary. The said explanation of the detaining authority cannot be said to be just, proper or reasonable. It may be noted that number of cases are registered against the petitioner in between 25-10-97 and 3rd March, 1999 and the petitioner has been released on bail in each case periodically. That if the detaining authority or sponsoring authority could have applied in either of the case, where bail application has been moved, no bail could have granted or even if it granted, the matter could be taken up before the Sessions Court or higher forum for cancellation of bail as available under Section 437 (5) of CrPC under the facts and circumstances of the case. The detaining authority does not appear to have applied his mind to the less drastic remedy of cancellation of bail as available under Section 437(5) of CrPC and as such, order cannot be sustained.

#. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-3-99 passed by respondent No. 1- The Commissioner of Police, Baroda against the petitioner is hereby quashed and set aside. The petitioner - Kapilaben Arjunsingh Fatesinh Rathod is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 18-1-2000 [A.K.Trivedi, J.]

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